IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

:: J U D G M E N T ::

D.B. CIVIL SPECIAL APPEAL (WRITE) NO.35 /2007

Gopal Lal Meena
Vs.
Jaipur Development Authority & Anr.

Date of Judgment :: 10th April, 2007

P R E S E N T

HON'BLE THE CHIEF JUSTICE SHRI S.N. JHA
HON'BLE SHRI JUSTICE MOHAMMAD RAFIQ

::

Shri R.N. Mathur for the appellant.

*****

BY THE COURT (PER HON'BLE THE CHIEF JUSTICE)

This special appeal is directed against the order of the learned Single Judge dated 22.11.2006 in S.B. Civil Writ Petition no.5465/2006 dismissing the writ petition of the appellant. The appellant had filed the writ petition challenging the order of the Jaipur Development Authority Appellate Tribunal dated

24.6.2006 in Reference/Appeal no.205/2006 rejecting his application.

The dispute relates to the land of Khasra nos.287 measuring 333.33 sq. yards at village Chainpura within Sanganer tehsil of Jaipur district. The appellant claims to have purchased the land from one Smt.Anoop Kanwar on 22.5.1990. According to the appellant the land in question was originally purchased by Hathroi Garhi Grah Nirman Sahkari Samiti Limited – a housing Society (hereinafter referred to as 'the Society') - from the khatedar. The date of sale has not been disclosed. However, it is said that the Society sold the land to Smt. Anoop Kanwar on 20.4.1981. It is said that after purchase Smt. Anoop Kanwar deposited the conversion charge of Rs.2099.98 with the Authorized Officer for conversion of the land from agricultural to urban for construction of residential house. It is further said that the transfer of ownership by Smt. Anoop Kanwar in favour of the appellant was endorsed by the Society. After purchase the appellant built the house, and in 1992 applied for electric connection and after site inspection the same was provided. In support of his claim of ownership of the land, the appellant relies on ration card, electricity

bills, voter’s identity card etc. According to the appellant, the Jaipur Development Authority (JDA) started demolishing the structure standing on the land on or about 28.4.2006. The appellant submitted reference application under Section 83 (8)(b) of the JDA Act before the JDA Appellate Tribunal. The said reference was later treated as appeal and notice was issued under Section 72 of the Act. The Commissioner appointed by the Tribunal found possession of the appellant and submitted report to that effect. However on 24.6.2006 the Tribunal rejected the appeal observing that the appellant had failed to establish his right, title and interest in the land. The appellant approached this court in the connected writ petition and after the same was dismissed, he has come to the Division Bench in appeal.

At this stage, it may be mentioned that the land in question along with other lands was acquired by the State Government under the provisions of the Rajasthan Land Acquisition Act 1953 which was then in force. Notification to this effect was issued under Section 4 of the said Act on 21.8.1969. On 12.4.1973 the notification/declaration under Section 6 was issued. On 9.4.1981 award was passed. Earlier, the

acquisition proceeding was challenged by owners of the land, that is, khatedar in this Court but the writ petition was dismissed on 8.5.1975. Special Appeal against the judgment of the learned Single Judge was also dismissed on 12.1.1981. On 29.8.1983 the Supreme Court rejected the Special Leave Petition. After dismissal of the Special Appeal, on 4.5.1981 compensation was paid to the khatedar, Kashi Prasad Tiwadi, which was received by his sons Ayodhya Prasad and Daulat Babu. The possession of land was later delivered to the JDA on 22.10.1983. The JDA in turn allotted/sold the land to the third parties.

The afore-mentioned facts regarding acquisition of the land in question, unsuccessful challenge to the acquisition proceedings and payment of compensation to the khatedar, delivery of the possession to the JDA and allotment/sale by the JDA to the third parties are not in dispute. The point for consideration is whether the land having been acquired by the State and stood vested, the appellant can claim any right, title and interest in the land.

As mentioned above, the date of purchase of the land by the Society has not been disclosed. Counsel for the appellant however fairly stated in course of hearing that the purchase was subsequent

to issuance of the notification under Section 4 of the Land Acquisition Act. The land having vested in the State by virtue of the notification under the Rajasthan Land Acquisition Act, it is clear that the khatedar was not competent to sell the land to the Society afterwards.

Indeed, the Tribunal found that the appellant had failed to produce any document showing his ownership over the disputed land or transfer of ownership such as sale deed, allotment letter. The only document produced by him was the allotment letter in favour of Smt. Anoop Kanwar by the Society dated 20.4.1981. But no document showing transfer of ownership by Smt. Anoop Kanwar to the appellant had been brought on record. The report of the Commissioner who made local inspection on 17.5.2006 shows that over the land a temple was standing. The Tribunal held that existence of temple does not support the appellant’s claim of possession. In these premises, the Tribunal rejected the claim of the appellant but with an observation that it is open to the JDA to grant relief to the appellant at administrative level.

Attention of the counsel was drawn to the said observation in terms of which it is open to

the appellant to submit representation to the JDA and hearing was adjourned to enable the counsel to take instructions as to whether the appellant would like to make representation in terms of the aforesaid observation. In such a case, this Court observed, leave may be granted to the appellant to withdraw the present appeal and also the connected writ petition. When the hearing was again taken up, counsel conveyed the appellant’s unwillingness to file any representation and stated that suitable order may be passed on merit.

In fairness to the appellant it may be mentioned that in course of hearing counsel for the appellant referred to certain circulars in terms of which, according to the appellant, his possession over the land in question can be regularized. We have been taken through the circulars but we find nothing therein to suggest that the land which stands validly acquired by the State can be regularized in favour of a stranger who is in unauthorized occupation of the land i.e. an encroacher. As a matter of fact, the land having been allegedly sold by the khatedar after the acquisition proceedings had been set in motion, such transfer could not have conveyed right, title and interest in favour of the Society, and therefore even if the case of the

appellant is accepted on face value, the alleged allotment by the Society in favour of Smt. Anoop Kanwar or the professed sale by Smt. Anoop Kanwar to the appellant are just paper transactions. The appellant being an out and out encroacher, in unauthorized occupation of the land, we are satisfied that he cannot claim any right in the land. His claim for regularization of the land in terms of circulars also is not maintainable.

In the above premises, we find no error in the order of the learned Single Judge dismissing the writ petition of the appellant.

Consequently, the appeal is dismissed.

[MOHAMMAD RAFIQ], J. **[S.N. JHA], CJ.**

Skant/-